श्रीमती सविता शारदा (गुजरात) **:** मैडम, हिंदी वाला जो "स्वागत" होता है, उसमें बहुत सारी चीजें होती नहीं है। यह हिंदी का अपमान है।

उपसभापति : हिंदी का प्रचार तो करना चाहिए।

GOVERNMENT BILLS

The Companies (Amendment) Bill, 2002

and

The Companies (Second Amendment) Bill, 2002

THE DEPUTY CHAIRMAN : Now, we will take up the Companies (Amendment) Bill, 2002 and the Companies (Second Amendment) Bill, 2002. As decided, we are going to discuss it together. When we look at the time, if we take the two Bills together, the time allocated is five hours. But, I think we do not need that much time. So, if the House so agrees, we can reduce this time to three hours.

SHRI PRANAB MUKHERJEE (West Bengal): Madam, I would suggest that we will complete these two legislations today but let us not fix the time. Let us keep the time as it is. If there are no speakers, we will complete it earlier. But please do not reduce the time right now. The floor managers will find it difficult to manage it.

THE DEPUTY CHAIRMAN : We discussed it in the Business Advisory Committee meeting also. While allotting time for a legislation, we never consider the time taken by the Minister for his reply.

SHRI PRANAB MUKHERJEE : Please allot half-an-hour for the Minister's reply, and, thereafter distribute the rest of the time among the political parties, as per their entitlement. Out of 5 hours 15 minutes, you exclude half ah hour or 45 minutes, whatever the Minister wants, and, thereafter, distribute the remaining time among the political parties.

THE DEPUTY CHAIRMAN : So, four hours will be distributed among the political parties.

THE MINISTER OF FINANCE AND COMPANY AFFAIRS (SHRI JASWANT SINGH) : Madam, I move

"That the Bill further to amend the Companies Act, 1956, as passed by Lok Sabha, be taken into consideration."

I also move :

"That the Bill further to amend the Companies Act, 1956, as passed by Lok Sabha, be taken into consideration."

SHRI PRANAB MUKHERJEE : Please make a short speech, Mr. Minister.

SHRI JASWANT SINGH : I can make a speech, but I thought I would save the time of the House.

THE DEPUTY CHAIRMAN : No, Jaswant Sinvihji, I will ask you to speak after I say 'The Motion is moved' because I have to approve it.

SHRI JASWANT SINGH : Madam, the Companies (Amendment) Bill was introduced in the Lok Sabha on 31st August, 2001. Thereafter, it went to the Standing Committee on Home Affairs. At that time, the Department of Company Affairs was a part of the Ministry of Law and Justice. The Committee has presented its report. A few changes have been suggested, which have been accepted. This Bill was considered and passed by the Lok Sabha on 10th December, 2002. I may remind the hon. Members that the Government had constituted a High-Level Committee under the Chairmanship of Dr. Y.K. Alagh, in 1999, to examine and make recommendations for a legislative framework to enable formation of co-operative businesses into companies. The Alagh Committee recommended - a) framing a legislation which would enable incorporation of cooperatives as companies, and conversion of existing cooperatives into companies; and b) ensuring that the proposed legislation accommodated the unique elements of cooperative businesses within a regulatory framework, similar to that of private limited companies. This is the broad scheme of things. This Bill or the proposed legislation when passed will provide primary producers a new kind of organisation, i.e. a producer company to produce and market the products in a modern and professional manner on par with other

companies. It will enhance their efficiency and competitiveness. I request the House to grant its approval to this Bill.

The Companies (Second Amendment) Bill, 2002 was introduced in Lok Sabha on 30th August, 2001. It was referred to the Department related Parliamentary Standing Committee on Home Affairs. At that time, the Department of Company Affairs was part of it. The Committee submitted its report to the Parliament in July 2002. The Committee suggested certain amendments in the Bill and most of them have been accepted.

This Bill had been considered and passed by Lok Sabha on 10th December, 2002.

If the hon. Members recollect, the Government had constituted a Committee under the Chairmanship of Justice Balakrishna Eradi consisting of experts to examine the existing law relating to the winding up of companies in order to remodel it in line with the latest developments and innovations in the corporate law and governance and to suggest reforms in the procedure at various stages followed in the insolvency proceedings of companies to avoid unnecessary delays in tune with the international practice in the field.

On the basis of the recommendation of the Committee, the Companies (Second Amendment) Bill, 2001 was introduced in Lok Sabha in August 2001. The hon. Members are aware of the recommendations. I, therefore, commend both the Bills, the Companies (Amendment) Bill, 2002 and the Companies (Second Amendment) Bill, 2002 for the approval of the House.

The questions were proposed.

SHRI HANSRAJ BHARDWAJ (Madhya Pradesh): Madam, this House is aware that India is going through a process of liberalisation and there is a global demand that our laws should be in tune with economic liberalisation. Therefore, these two Bills have been brought forward to achieve this aim. The Companies Law is a very old law. It was very difficult to administer the corporate world with these old laws. One Bill is in regard to producer companies. It is heartening to note that this law will enable our companies to compete with the rest of the world, particularly the

multinational companies which will come to India. Some of our companies are eager to meet this challenge. I welcome both these measures. It is the need of the hour.

So far as the law relating to producer companies is concerned, I have nothing more to say. It is a welcome feature and our companies should make the best use of this law in order to survive in the market. I don't think it will be the intention of any Government that our own companies should not survive against the onslaught of outsiders. Actually, It will open avenues for the producer companies to compete.

So far as the Companies (Second Amendment) Bill is concerned, it is part of the reforms process which is being brought in the Companies Law and this is also a very welcome feature and this particular amendment will make a very significant departure from the old law, namely, that they are putting all the jurisdiction with the Company Law Tribunal. One institution, namely, the Company Law Board is being abolished now, a Tribunal is being established. So, the job of the Company Law Board will be performed by the Tribunal and several other jurisdictions are being also amalgamated with this Tribunal, and I am aware that those decisions are, of course, in their own merit, may not be wise, because BIFR is sought to be brought here. The SICA and BIFR also relate to the Finance Ministry, but the Government in its own wisdom, has taken this decision that BIFR and SICA should also be given to that Tribunal. And, powers of the High Court with regard to winding up and liquidation of companies are also being given to this Tribunal. So, it will have plenty of jurisdictions, bigger jurisdiction to the Tribunal. I don't think whether the Tribunal wilt be able to cope up with this type of a work and whether it will be able to maintain that kind of efficiency which the High Courts were-maintaining. Although the progress of winding up and liquidation was very tardy in the High Courts also, we cannot wait. In this scenario of economic changes, the winding up and liquidation should be a quick process and the intention of the Government is, perhaps, to bring speed into this winding-up and liquidation. So, it is a matter of future experience, how far these Tribunals will succeed in performing their work efficiently and, therefore, there can be no opposition if the Government wants to try a new Tribunal in place of the High Court. Then, again, whether it will be possible to avoid going to the High Court, in spite of all these Tribunals being in position under various Articles of the Constitution, specially because the power of the judicial review is very wide

in the country. So, the High Court invariably will have to be bothered even after the Tribunal is established. Then, there is an Appellate Tribunal, which has been given. Again, same thing, appeals will go against the Tribunal. But, even after appeal, there is a scope, because as the law stands today, power of judicial review remains with the High Court always, because it is a Constitutional provision - Article 226 and Article 227.

Therefore, I had expressed my apprehension about the dilution of the power of High Courts, but again, the Government's view is that they will try to avoid High Courts. So we agreed. I have only one thing to say. Just now, Shri Sanjay Nirupam raised the question of employees. This matter was also discussed in the Committee. And we had recommended that the Government should be sympathetic about those people who are serving in the offices of the Company Law Board, MRTP and other allied Tribunals which are functioning. They are Government employees and the Government should have no hesitation in saying that these very employees, who are serving in the Company Law Board or other Tribunal", will be added to other tribunals until they superannuate. This is a human touch we wanted the Government to consider. It was heart-breaking for me to see that in the process of economic liberalisation, you don't care for human angle. We have always pleaded that liberalisation should be with a human face. How can we accept a legislation, which throws out the employees, who have served with distinction and hard work? There should be a sympathetic consideration on such issues. Mr. Finance Minister, we have not raised any issue with regard to the post of Chairman or Members. You may appoint anybody as Chairman according to the process laid down in the law. But, certainly, when you draft a law with regard to your own employees, you see to it — you don't give them any promotion, don't increase their salaries --but, at least, allow them to serve where they are serving at the moment. What is the objection? What objection can there be to re-employ these very employees in the Tribunal? After all you are increasing the strength of the Benches. For this purpose, I have also moved an amendment. Normally, when we are Members of the Standing Committee and the Committee has recommended a thing, we need not move an amendment on that. But it is only to draw the attention of the hon. Minister that I have given this amendment that the employees of the Company Law Board should be accepted as the employees of the Tribunal. They are working there; they know the functioning of the Company Law Board, and the Tribunal also would be discharging the same functions. In fact, this is

where we had recommended unanimously; we had no differences on this. In fact, there are no differences, cutting cross party lines, on such laws which are in the interests of the future of the country. Therefore, the Department and the Ministry should have respected the feelings of the Standing Committee. It was not something unusual. When the composition of the Tribunal was discussed, we saw a point in it that the members should be of various disciplines; not just of one discipline, say, the judiciary alone. It can carry other people also, as the other Tribunals have one technical member, one judicial member and so on. We had not recommended any changes in it; but, in particular, these employees, who are in the service of the Board, have a very good case, and the Government should have sympathetic consideration because they are serving the Government at the moment. They should not be deprived of their jobs in the process of liberalisation. So, this particular law, while being so good, is a little harsh to its own employees.

Madam, while concluding, without making much comment on this law, -- there is no scope to speak further on this - I would recommend to the hon. Minister to consider this issue. I don't think the employees are very large in number, and the Government should not have a policy whereby people would be deprived of their jobs while bringing in reforms. I am told that they are there for about almost 40 years in the Company Law Board, and some of them have served it with distinction. So, will the hon. Minister kindly consider that these employees would continue to serve, in one capacity or the other, either in the Tribunal or in the Ministry,. until their superannuation?

I would also ask of the hon. Minister, for whom I have very high regard: Will he kindly give an. assurance to the House -- the Secretary did promise it in the Committee; we have even been told privately that the Cabinet too had favoured the idea that they should not be dismissed after the Tribunal is established -- that he will, personally, see to it that their services are protected?

With these words, I fully support both the Bills. Thank you.

THE DEPUTY CHAIRMAN: Dr. L.M. Singhvi...

SHRI JASWANT SINGH: Even though it is normally not done, I would like to intervene here because of the validity of the point that the hon. initiator of the discussion has raised and also because of the long personal relationship that I have had with the hon. Member, Hansrajji, I do wish to categorically state that we will ensure that all the personnel of the existing arrangement are absorbed to the maximum possible extent. This is N0.1. Secondly, nobody will lose his job because even if they are not absorbed in the new arrangement, they would be retained, on deputation, in the Government. Thirdly, it must also be understood that we are establishing sixty-three new services. I can assure this much to the House. I am breaking the pattern of discussion by giving this assurance at the very beginning of the discussion.

DR. L.M. SINGHVI (Rajasthan): Madam, I would, first of all, say that the assurance, which has come to us from the hon. Minister, sets the tone for the discussion, for the same co-operation which had preceded the consideration of this legislation in the Standing Committee, for the constructive approach that the Standing Committee adopted, and the response of the Government by adopting many amendments which were suggested by the Standing Committee. I would also point out that under the leadership and Chairmanship of Shri Pranab Mukherjee, the Committee deliberated on these issues for long and had reached a unanimous conclusion. And that is why it has to be understood that this legislation is being offered today, to the country on the basis of a broad consensus. I should also like to add that we, in the two Houses of Parliament, are setting a new record for transacting, swiftly and in a prolific manner, legislative business. No longer can anyone taunt us for neglecting what is the essential and fundamental function of this House and the other House. And I think, it is important for us to make sure that this kind of legislative record of output is maintained in future. It redounds to the credit of the Government, it redounds to the credit of the Members of both the Houses and it redounds to the credit of all the political parties. Madam, I had the honour to serve on the Parliamentary Standing Committee and I note with satisfaction that the suggestions made by the Parliamentary Standing Committee have been accepted in one of these two Bills. I also wish to say that the Government has shown itself to be sympathetic to the considerations, which the Parliamentary Standing Committee had pointed out. Those considerations were not only humanitarian considerations but considerations of good governance. We had pleaded with the Government

that so far as possible no one should lose his job, although sometimes it is a necessary consequence of reform. But, I do think that we have to understand that this Government, which is a Government with a heart in the matter of legislation -- and the assurance today has come to us as a very welcome assurance -- should also consider the question of how far we can go multiplying the strength of the administrative apparatus in terms of numbers.
Madam, we have two pieces of legislation. One integrates the cooperative sector into the corporate sector and offers a new opportunity, a unique opportunity to make the cooperative sector, better and more effective. We have also in the other legislation, a possibility and I would just say 'a possibility' of making this system work better in terms of the disposal of cases. I would like to welcome the idea of revival, rehabilitation and winding up being speeded up. It does seem to me that the rehabilitation and revival cess which is proposed by new sections 441 A and 441 B would be a great help and possibly, offer an assurance to the sector in which there is sickness. But, I think, it is important that the ceilings are observed and not modified. A very salutary ceiling has been provided in the legislation that the rehabilitation and revival cess will not exceed 0.1 per cent and will be of the annual turn-over and I do hope the disputes with regard to the annual turn-over will not procrastinate the fruition of this idea. Madam, sickness of the industries has been a problem with us for a very long time. But the cures that we devised for solving the sickness of the industries, in fact, added to the disease itself. There is a saying in Hindustani which says, "मर्ज बढ़ता ही गया, ज्यों-ज्यों दवा की"That is partly because of the breakdown in the sector of industry so far as morality and sense of public accountability is concerned. It is also important to remember that some of the institutions - which we brought into existence by legislation such as BIFR--themselves became sick institutions. They did not transact business with any sense of despatch and expedition. The number of cases which gathered dust in those tribunals, was a cry in the wilderness and yet no reform was forthcoming.

It is in that context that we must welcome the new resolve, the political will, that is expressed in this legislation.

The National Company Law Tribunal, which will replace the existing machinery and which will also have a much wider jurisdiction, will, I hope,

be able to discharge the various functions which are vested in it. I share the view which the hon. Member, Shri Hansraj Bhardwaj, has expressed, with regard to the substitution of the jurisdiction of the High Court. It is true that the High Courts' jurisdiction, in some of these cases, was also suffering from the great problem of delay. But I do hope that the disease does not get worse with the cure that we are offering. On the other hand, here is an experiment. An experiment is, after all, Madam, an investment in hope, and an exercise in political will and, therefore, this House should endorse the new moves that are being made with a view to expediting all steps the delay is being reduced, at least, theoretically -- it is now 240 days -- from 12 months to 22 months earlier. I think it ought to be reduced even more. We have become accustomed and addicted to delay in our country. Delay is the cancer which is eating into the vitals of the judicial system. Delay is the problem which affects the credibility of the system itself, and delay is what kills the industry, worse than anything else. It is important, therefore, Madam, that the problem of delay is handled with the greatest sense of commitment. I do not know whether the National Company Law Tribunal that is being brought into existence will be able to cope with it. After some time we must, therefore revisit this legislation, reassess the performance of the new mechanisms which we are now trying to put in place, and we must make sure that appointments on this Tribunal are made with a strong sense of purpose, on the basis of merit. I am sure that the rules and the provisions made in the legislation already fortify us in the hope the problem of quick disposal this will be solved, and I do hope that the problems of sickness will be overcome; the problems of delay will be overcome; and I think/it would help to improve the performance of our corporate sector.

This will also contribute to our integration with the system of globalisation that is coming in. Now, globalisation is an imperative, but it is not only for the sake of globalisation that we have to streamline our machinery; we have to streamline our machinery in order that our own corporate sector may hold -its own in the world.

I congratulate the hon. Minister for having brought this legislation. I congratulate the senior Minister of Parliamentary Affairs for having brought these pieces of legislation in a procession in this session of the House, and I congratulate ourselves for having expeditiously dealt with all the legislative business.

SHRI P. PRABHAKAR REDDY (Andhra Pradesh): Thank you, Madam, for giving me this opportunity to participate in this discussion.

Madam, while supporting the Bill, I would like to say that the purpose of the Companies (Amendment) Bill is to avoid the multiplicity of forums. At present, jurisdiction in regard to corporate restructuring, like insolvency, winding up and dispute resolution, is vested in different authorities, namely, the High Court, the Company Law Board and the BIFR. So, consolidation of all these powers and vesting them in one authority, which is the aim of this Bill, will help in saving time and cutting delays. This is a welcome measure, and I wholeheartedly support it. Madam, the present Bill is far more flexible. Previously, under the SICA, unless 100 per cent of net worth of a company was eroded, one cannot approach the BIFR. But, under the present Bill, on erosion of 50 per cent of net worth, a company can approach the National Company Law Tribunal, which is going to be created by this Bill.

Then, Madam, in the present Bill, adequate care is taken of the interests of the workers. A cess is being introduced where every company has to contribute 0.005 per cent to 1 per cent of its annual turnover to take care of the interests of the workers. Madam, I was told that the amount that will accrue through this cess will not exceed Rs.100 to 150 crores. I don't know whether it is correct or not, but this is what have I read in some of the newspapers. The number of cases which are going to come before the National Company Law Tribunal is going to be far more because the law is liberalised and the cases which are being looked after by three authorities will now come to the National Company Law Tribunal. I want to know from the hon. Minister whether the Government is going to make good the shortfall, if this amount is not sufficient for meeting the requirement of payment to workers.

Madam, I have to make one suggestion about the fund. Instead of the fund going into the Consolidated Fund, if a separate fund is created for this purpose -- like the Road Cess Fund -- then, that amount can be retrieved and paid to the workers faster. Would the hon. Minister consider this issue?

Madam, with the passage of this Bill, all cases which are pending before the Company Law Board will get transferred to the National

Company Law Tribunal. That is fine. But, as far as cases pending before the BIFR and the A1FR are concerned, they stand abated. I would like to know from the hon. Minister the fate of those cases which are pending before the BIFR and the AIFR, after this Bill is passed. Once they are abated, cases have to be filed afresh before the new National Company Law Tribunal, and the whole process has to start once again. The very idea of creating this Tribunal is to reduce the time. There are about 3000 cases which are pending in the BIFR. If all these cases are abated, and if they have to approach the National Company Law Tribunal afresh, then this will unnecessarily result in delay and this can be avoided. Madam, as far as transfer of cases from the Company Law Board is concerned, there should not be any delay. When the DRTs were created, the cases were transferred from courts to the DRTs, but there was enormous delay in the transfer. If such a thing happens here, then it will defeat the purpose of the Bill. So, this aspect has to be taken care of.

Madam, the other point which I would like to raise is this. The Bill is vesting the powers of various authorities in one body, namely, the National Company Law Tribunal. I want to know whether this body would be able to take care of all these problems because this body would deal with all the cases which are at present being dealt with by the Company Law Board, the BIFR and the High Courts. It has to be seen carefully whether the National Company Law Tribunal would be able to cope with the enormous workload.

Madam, the DRT and BIFR failed because the posts in these bodies were not filled, members were not appointed in these bodies in time and infrastructure was not created. As per the present Bill, the National Company Law Tribunal is going to have 62 members. Unless prompt steps are taken to make appointments of these 62 members and then to create infrastructure, it is going to pose a big problem.

Madam, another point which I want to raise is this. As per the provisions of the Bill, the National Company Law Tribunal will have 25 benches, and it will have to do a lot of work. For that, there is only one appellate body. The Government should see whether one appellate body will be able to dispose of all these cases.

Madam, overall, this is a good piece of legislation. This will solve the problem of sick industries and provide relief to the workers, creditors

and banks and will help to revive the sick units. Madam, with these words, I support this Bill.

THE DEPUTY CHAIRMAN: Mr. Dipankar Mukherjee, you are the next speaker, after lunch. Now, we have divided the time according to four hours. Now, I adjourn the House for lunch for one hour.

The House then adjourned for lunch at one of the clock.

The House reassembled after lunch at three minutes past two of the clock,
MR. CHAIRMAN in the Chair.

MR. CHAIRMAN: Shri Dipankar Mukherjee.

SHRI DIPANKAR MUKHERJEE (West Bengal): Sir, the Minister is not here. *...(Interruptions)...*

MR. CHAIRMAN: He is coming. *...(Interruptions)...*

श्री संघ प्रिय गौतम (उत्तरांचल) **:** दूसरे मिनिस्टर बैठे हैं। वह आ रहे हैं।

श्री सभापति : आप शुरू करें, वह आ जाएंगे।

SHRI SANGH PRIYA GAUTAM: The other Minister is sitting. ...(Interruptions).. He will take note. *...(Interruptions)...*

SHRI DIPANKAR MUKHERJEE: There is Minister of Finance, there is a State Minister. ... *(Interruptions).* ..Sir, if this is the whole approach, then I will start from that only. *...(Interruptions)...* Sir, the Bill which we are discussing today, I will restrict myself only to the first part of it, that is, the Companies (Amendment) Bill, 2002. Sir, I will be speaking on the Companies (Amendment) Bill, 2002. On the second Bill, that is, the Companies (Second Amendment) Bill, 2002, my colleague, Mr. Poulose will speak.

Sir, my first submission on this -- the Minister should have been here- is that this Bill as it is, puts in place the National Company Law Tribunal and the Law Appellate Tribunal to take over the functions performed by the Company Law Board as well as the BIFR and the AIFR. I would like to submit to the hon. Minister, through the hon. Chairman, that so far as the replacement of BIFR and AIFR is concerned, the BIFR and the

AIFR are governed through the Sick Industrial Companies Special Provision Act, 1985, the SICA. This Act still remains on the Statute. A repeal Bill for this was brought before the House for repealing this Act which is still under consideration of the Standing Committee on Finance. Now, when we are discussing and debating this Bill, which, actually, replaces that Act, through dismantling the BIFR and appellate authority, are we not pre-judging the discussions or the deliberations which the Standing Committee on Finance is seized? Is it not like putting the cart before the horse? Sir, I want your ruling on this. Today, by discussing this, are we not pre-judging the issue of repeal of SICA, 1985, which has been introduced in Parliament and is under consideration of the Parliamentary Standing Committee on Finance? Are we not pre-judging it? I do not know whether it is a breach of privilege of Parliament. Sir, you may be well aware. Or, Mr. Pranab Mukherjee may be well aware of it. But, to me, it looks quite odd. When that Act still remains on statute, a repeal Bill is already there before Parliament, which is under the consideration of the Standing Committee on Finance...

MR. CHAIRMAN: I seek the advice of Shri Pranab Mukherjee.

SHRI PRANAB MUKHERJEE: Sir, first, let the hon. Member finish his speech.

SHRI DIPANKAR MUKHERJEE: This is my first point. My point is whether we should have a discussion on this. By debating this issue, are we not pre-judging the issue, which is already there under consideration of the Standing Committee?

MR. CHAIRMAN: I think, that is not the question.

SHRI PRANAB MUKHERJEE : Sir, to some extent, the hon. Member is correct. The BIFR and the AAIFR were set up under another Act of Parliament, not under the company laws. When this issue was brought before the Parliamentary Standing Committee, of which I am the Chairman, and, Mr. Bhardwaj and Mr. Gautam and many other hon. Members of this House and the other House are there in the Committee, we suggested to the Government to have a final view on SICA. On accepting the Eradi Committee Report, we recommended that all these activities should be brought under one umbrella i.e., NLCT. The powers of the Company Law Board are vested in it. The powers of the High Court are vested in it. The

powers of the BIFR are vested in it. But, there would be an anomaly if the SICA is not repealed. As you know, I think, it was before the Standing Committee for quite some time. I do not know what would be its final view. We completed our exercise, on this Bill, sometime, in May and on another company Bill in July. But, in between, the consideration of that Bill has not been completed by the concerned Standing Committee. I do not wish to mention the name of that Standing Committee. All of us are aware of it. Let it consider it. I am not going into that aspect. But, a little bit anomalous position is there because the Lok Sabha has already passed this Bill. In the Companies (Amendment) Bill, which we are considering now, already the proposition for repealing SICA has been approved by the Lok Sabha. That means, when the whole House has accepted it, a part of it is still considering whether that Act should be repealed. The moment you approve the Companies (Second Amendment) Bill, you accept repealing of the SICA, which has been done by the Lok Sabha, and the same is going to happen here. Therefore, the entire exercise of the other Standing Committee becomes a little -- I do not want to use the word 'irrelevant' --superfluous, because, Parliament, as a whole, is accepting a proposition where an essential ingredient of the whole scheme that the BIFR should be abolished and its powers should be vested in a new organisation which is being created. Therefore, if the BIFR does not have the power, it is not merely the position taken by the two Standing Committees. A House has already taken the position. The House -- Lok Sabha -- has passed the Bill. The House is supreme. Therefore, the House has passed the Bill. The consequences of the Bill, which has been passed by one House and is going to be passed in another House, are that the power, the authority and jurisdiction of the BIFR would be vested in this new organisation which is being created now. This is the position.

SHRI NILOTPAL BASU (West Bengal): There is a constitutional question, Sir. Actually, it appears from what Mr. Pranab Mukherjee and Mr. Dipankar Mukherjee have said that the constitutional right of this House is being abrogated.

MR. CHAIRMAN: No, that is not the question. No.

SHRI NILOTPAL BASU: Sir, just give me one minute to explain. The consideration of this Bill makes the repeal Bill, which is being considered by the Standing Committee, of which Members of this House

are also members, totally redundant. This is completely an anomalous situation.

MR. CHAIRMAN: Let the Minister explain.

SHRI JASWANT SINGH: Sir, let me clarify. The simple question is, are we pre-empting, firstly, the deliberations of the Parliamentary Standing Committee on SICA? Secondly, are we, in any sense, curtailing the rights of this legislature? No, Sir; we are not, because it has been provided in this Bill -- this question arose during the discussion in the other House also -- that different sections of the Bill shall come into effect at different times. The provision relating to powers, which are currently with the SICA, will be brought into effect only, and only and if after the SICA is repealed. If the SICA is not repealed, those powers will not be brought here.

SHRI DIPANKAR MUKHERJEE: Anyway, the question still remains, and it is for the future also. You will take care. By doing this, as Mr. Mukherjee was referring to, when it has been passed by the Lok Sabha, we are definitely pre-empting or pre-judging. We are not giving freedom. Mr. Mukherjee, as the Chairman of a Committee, had been my Chairman. I have learnt many things from him. But it is a fact that the propriety is involved. Definitely, by passing this in the Lok Sabha and discussing this, we are pre-empting, we are pre-judging the issues before the other Committee.

Now, I come to the second part. I would like to quote from a press cutting regarding Mr. Vajpayee's statement, made by him four years back. Anyway, we can refer to it. This statement was made in January, 1998 in a press conference. On the issues of public sector revival, etc., he said, "Workers: Where do they find their place? If a company becomes sick, it is not because of workers." He even taunted the then Congress Government by saying, "In the VRS, in the golden handshake. I find only the Congress hand, no golden hand" This is what he had said, in his usual way. If you go through the whole Bill, it appears that the labour is not on the agenda of this nation, I am not talking of the Government. I am not, and I cannot. Many people will support, this side or that side, labour is not on the agenda of the nation. Sir, I was referring to the SICA, 1985. The major objective of this legislation was, if you go through section 2 of the

original SICA of 1985, it specifically says that this Act was enacted...*(Interruptions)...* SICA को अब बदल रहे हैं, SICA को अब रीप्लेस कर रहे है । How the objectives are changing? Section 2 specifically says that this Act was enacted in pursuance of the Directive Principles of the State Policy. The basic objective of the SICA was the revival of sick industries. And, this objective had been considered by Parliament to be in keeping with the Directive Principles of State Policy. The whole idea of the BIFR and the AIFR was that industrial sickness was treated as a major problem in the country. It is not a question of insolvency alone. Today's Bill, which we are discussing, mainly focuses on insolvency part of it, the asset part of it, the problems of industrialists, the problems of corporate. I can quote from the report of the Standing Committee, where certain queries were placed. Paragraph 11.1 of the report of the Standing Committee, regarding rationality of creating the NCLT, says, "The Government has responded by stating the corporate restructuring, including insolvency and winding up and dispute resolution for the Indian corporate, currently handled in three different quasi judicial forums, namely, the Company Law Board, the BIFR and High Courts. There is a need to provide a single window service to the Indian corporates. Hence, there is proposal to have one body, that is, the NCLT, and to wind up both BIFR and CLB." This Government is for the corporates, of the corporates, and by the corporates. There is a difference between the objectives of the SICA Act, 1985, and the present Bill. I don't have time to go into its implementation part, and what we did here. We have certain objectives; those objectives are transformed into legislations, and then we implement them. If you find a lot of defects in the implementation part, it does not mean that the objective has changed. But here the objective has changed. The objective here is, clearly, 'corporates', and the locked up assets of the banks and financial institutions. Where do workers figure in this? I am afraid, certain things have just been lifted from the SICA Act and incorporated here. But what the Government had in mind was the Eradi Committee's report. And the terms of the Eradi Committee did not address the issue of revival at all. It had terms, like insolvency, speedy execution of winding up, etc. That is the issue. Today, we will have to decide whether revival is really an issue or not. We say that globalisation is the term of the day. We say that in globalisation, we have more competition. Yes, we have more competition. But what has been the result? If you see the BIFR cases, the number of cases of sickness has increased after globalisation, that is, post-globalisation. I don't want to go into the theory part of it, but the fact is that the companies are facing

competition, and sickness is increasing. Do you treat sickness only in terms of assets; do you treat sickness only in terms of NPAs; do you treat sickness only in terms of insolvency, or, do you treat sickness as a part where certain economic, social impacts are there? Now, today, what we are discussing about is the position of the BIFR, and whether it will be there or it will not be there. It will depend on the resolution passed by the Standing Committee. Mr. Reddy had asked, 'What will happen to those 3000 cases?' If I am not mistaken, in the BIFR, the number of pending cases is around 1306, and lakhs of workers are involved in it. Now what will happen to them? They are in suspended animation. The sickness is going to increase. What was needed, what was necessary was, when the mechanism was not working, the policy and the objective of revival should have been improved. I would like to say that we are not happy with the working of the BIFR. From the workers' point of view, I can say that we are not happy. I don't know what the enterprenuers say about it, or, what the corporates say about it. But, we are not happy with the delays. Still we are working with delay process. In many cases, I had represented the trade unions; not the corporates, before the BIFR. I found that a proper Bench is not there. There are only five Benches for revival. Now we are going to have ten special Benches for revival. This will not be adequate. Out of these five Benches, one is without a Head. And there are Benches without members also. And the basic problem with the BIFR is, and this is what the unions have been indicating to the Government also, that it has a mandate for winding up only. The BIFR can have a mandate for winding up; that could be forced by it. But the BIFR did not have any mandate for revival. If the revival scheme was to be sanctioned by the BIFR, it was subject to the approval of all the secured corporates, and all the agencies. Even if the trade unions say, 'we don't accept the revival scheme'. It could not be implemented. Even if a bank says, 'No; I don't agree to the scheme'. It can't be agreed to. If some concessions are to be given, the Government of India would say, "I don't want to promote'. This has happened in the case of a fertilizer company. Now, who is responsible for this? Today, the BIFR and the Appellate has said that Durgapur, Barauni and another part of the Hindustan Fertilizers should be referred back to BIFR for consideration and a period of four months should be given for revival. But the Promoter *i.e.* Government of India said, 'No, I have closed it. Irrespective of what you do, I have closed the window." So, in that case there was no mandate. Today also, the BIFR has no mandate to say that the Promoter, the Government of India has to take four months time to

revive Durgapur, Barauni and other units. This is just one example. These are the weaknesses. BIFR's major weakness was section 22 (1), where creditors had all the protection. But there was no mandate on the creditors. Section 22 (1) which is the biggest delaying factor, it was the biggest source or mechanism through which - now the corporators are giving us theories on how to run the country. बहुत मीटिंग बुलाते हैं, सर । Those defaulters are now taking our public sector. These are the people who have utilised section 22(1) to see that dues of the workers are not paid; dues of the banks are not paid. By going to BFR, they are taking the protection which has been provided through this mechanism. What is required is the resolve of this Parliament, resolve of the people of this country to see that this law is amended. What have we done? It has no alternative. Where should the workers go? You say that some problems have been faced by the BIFR and the appellate authority, but I apprehend that the same problems might be faced by the NCLT. The span of the Company Law Board and that of sickness is much more. As per the new provision, now, if 50 per cent assets of the company have eroded, it can go to NCLT. Earlier, it was 100 per cent. What will be the result? More cases will be referred to the NCLT. Because of the global competition, sickness is going to increase. More cases will be referred to it. What is the mechanism through which this should be sorted out? Why we are opposing this Bill is, because the actual objective of this Bill, as someone said, is faster liquidation - faster liquidation through winding up the companies. That is the basic objective of this Bill. But the interest of workers or labourers has not been taken care of. One more point I would like to make :-, it has become a totally judicial body. Where will the workers go? Do the workers have any say in this? The BIFR being a quasi-judicial body, some of the people like us could have gone and presented their case. But, once it becomes a National Company Law Tribunal, it will be a totally judicial body. Do you think that the workers of small or big companies will be able to present their case through lawyers? How expensive will it be? Will it be possible for them to present their cases? Therefore, the reason why we are opposing this Bill is that without going into the details of the working of the BIFR - you have never discussed BIFR's working in this Parliament for years together - you are taking this step. It is being done at the cost of the poor workers, whose dues will never be recovered.

My last point is, some peanuts have been thrown. This Government is also interested in revival, as Dr. Singhvi said, because a cess

has been charged. How much is it? Someone said that it would come to Rs.100 crores. 1300 companies have been referred to it. Do you think that with these peanuts, any revival process can go on? Has the Government gone into the past working of the National Renewal Fund? There is a National Renewal Fund for the working class. Has anyone gone into the details of the National Renewal Fund? How has that Fund been utilised? How many companies have been revived through National Renewal Fund? So, this is just a tokenism to show that, yes, revival is in our picture. But by ignoring the objective of revival, and by combining these two mechanisms together, the Government has tried to dilute the issue of sickness, at the cost of workers. It will bring more disaster to the workers. With these few words, I oppose this Bill.

SHRI FALI S. NARIMAN (Nominated): Mr. Chairman, Sir, I have just three or four points for the consideration of the hon. Minister. The essence, as far as I can see, of the Companies (Amendment) Bill, is speed. The idea is that the appeals, from the Companies Tribunal, which have been lying in the High Courts for several years and have not proceeded further should be disposed of at an early date. Therefore, I would like to impress upon the hon. Minister that the key clause of this Bill is clause 10(FD), namely, "the Central Government shall appoint a person who has been or is qualified to be a Judge of a High Court as President in consultation with the Chief Justice of India or his nominee." Now, Sir, the basic point is, I am not enamoured of retired judges taking charge of an important tribunal like this, because an enormous infrastructure is there. There are 10 benches, and 28 members are to be appointed. I would like the hon. Minister of Finance to kindly consider the fact that this is not just a case where you put up a paper before the Chief Justice and ask him to name a judge who will act as the President. Some spadework has to be done by the Ministry itself, because this is not a political thing. And, I would prefer someone who has the knowledge of company law and administrative capacity, because if the President of the Tribunal, who is the most important person in this body of 28 people, is a person who is not in a position to organize the entire court, as it were, and the entire tribunal, the machinery of the Tribunal or this whole system will fail. It is best that you then leave it entirely wherever it is, to the various High Courts. Therefore, it is extremely important that the Government must do its own homework. From amongst judges - since you want a Judge, of course, of the High Court - to have somebody of importance, although I do not favour a Judge of the High Court. I do not

company has contravened. Therefore, Sir, there seems to be something odd. This part of it is a little odd. I would request the hon. Minister to kindly reflect on it, and see why we have an entirely newfangled idea of a company acting contrary to decency or morality. I mean, these are very, very difficult standards, one State may consider and petitions can be filed by a State Government, and, then, entertainment companies can be wound up all over the country. We do not want a spate of petitions for winding up certain entertainment companies which function in a manner which according to some State Governments is contrary to morality or decency. There must be a law with regard to morality or decency, not someone's opinion with regard to it. Lastly, I have a little problem about the Tribunals being created. I welcome their creation. It is all right. But, under Section 446, the traditional function of the body is to stay suits that are filed within the jurisdiction of the High Court. It is very difficult when the Tribunal itself is under the control - under Article 227 - of the High Court in the State. How will the Tribunal acquire power, as is sought to be done under Section 446 to stay a suit, which is filed in a lower court? That is a power which is really vested with High Courts. I am not very sure whether High Courts would entertain this sort of a thing, or, perhaps, once a Tribunal stays a suit, it might set aside that order under its writ jurisdiction. That is all I wish to say. Thank you.

MR. CHAIRMAN: Shri Satish Pradhan, not here. Shri Prem Chand Gupta, not here. Shri Virumbi.

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): Sir, already some important issues have been taken up by my colleagues. Because of the paucity of time, I do not want to repeat those points, on which my friends have already spoken.

Sir, now, in the place of the Company Law Board, a tribunal, called the National Company Law Tribunal, is going to be created to deal with the sick companies. About 62 Members will form the composition of the Tribunal to look at the companies in the entire country. I do not know whether it is possible or not.

Sir, if we look at the number of members of the Tribunals, even after having been approved by the Supreme Court panels headed by the Chief Justice, still some High Court Judges are yet to be appointed as

see why a Judge of the High Court should Head a Company Tribunal. If it is a Tribunal, why shouldn't a very competent and a highly qualified person who knows company law be the Head of that Tribunal? In fact, I prefer it, because you are already providing for an appeal to an Appellate Tribunal which is to consist a Judge of the Supreme Court or a retired Judge of the Supreme Court. This should not be construed, Sir, as another source of employment for retired judges. That is a very important thing for everybody to bear in mind. This should not be. It is very important, and this is the linchpin of the entire Bill as far as I can see. The whole Bill will fall to the ground, if the person concerned does not have the vision, does not have the capacity to organise an entire new structure which is, for the first time, contemplated. That is point number one.

Secondly, Sir, I would also like to say, I mean, and this is where, I think, some motivation is required. Just as Judges in High Courts have to push cases, notwithstanding who appears before them or when, I believe that it is the duty of the Presidents of these new Tribunals to push cases, and see that they are speedily concluded. That is of the essence because people as it is, find a great difficulty in retaining faith and confidence in a system which takes years upon years upon years. And, if this is also going to take years upon years upon years, then it is best, Sir, that - even after we pass this - You do not bring it into force. In fact, I would respectfully suggest that you only bring it into force if you have a workforce of sufficient strength and of sufficient capacity to put this Bill into effect, so that all your arrears which you contemplate are really reduced to a two year period, as is contemplated.

Then, Sir, there are two small things. First, I do not understand how a company can be wound up if a company acts contrary to the sovereignty of India, etc. which is a clause, which is inserted, for the first time, which I have never seen in any company law, anywhere in the world. I do not know why it was put in or at whose instance it was put in. Sir, perhaps, the hon. Minister can enlighten us. Under Section 433, the normal grounds on which a company can be wound up are, if it is just and equitable, if people do not pay their debts, etc. But, here it says, "If the company has acted against the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States and the public order, and - now what follows is Important - decency or morality." There must be a law first with regard to the decency or morality which the

members of the High Court. That is the situation. When it is so, how are the vacancies going to be filled up? That is the question. Of course, in the Selection Committee, the Chairperson is to be from the Judiciary, but other Members will be from the Executive. This also has to be taken note of.

One point that I would like to make clear is that the power for removal of suspension of the Chairperson and members of the Appellate Tribunal is vested with the Government under Section 10FD. In sub-clause (3) of 10FB, the power of suspension is also vested with the Central Government. Suppose, anything is filed against a Member or the Chairman in the Supreme Court. In case that person who is affected on the basis of the verdict of the Tribunal, wants to refer it to the Supreme Court, then what will be the protection for the Members and Chairman? I want to get enlightened on that point.

Regarding the closure, I would quoie Section 10FO. It says: "The Tribunal may, by general or special order, delegate, subject to such conditions and limitations, if any, as may be specified in the Order or to any member or officer or other employee of the Tribunal or other person authorised by the Tribunal to manage any industrial company or industrial undertaking, etc." That means, other persons also can be authorised by the Tribunal to manage a company or an industrial undertaking. Then, what is the power after having been taken? That is from Section 17(1) on page 13. Clause I7(i)(f) says, "to sell or dispose of the whole or any part of the undertaking, or of any of the undertakings, of the company;" Therefore, the person who takes the charge by the verdict given by the Tribunal will possess or will have ample power to sell or dispose of the property of the company that he is going to undertake. The next thing is this. Suppose after having sold the property, if fie wants to keep it as a wilful defaulter, then automatically within 60 days that company will be closed. What will be the position of the workers? What is the guarantee? There is another important issue that has not been mentioned in the Bill. Now, the Tribunal has taken the power of the High Court. Once the Tribunal is going to take the power of the High Court, there would be a spate of cases in the Tribunal. As per the estimates including, my State, in Chennai, there are about 3000 pending cases in BIFR. Once the Tribunal takes the power of the High Court, I want to know, whether the subjects that are going to be dealt with by the Tribunal can be referred to in this august House when they are being so dealt with. Or, will it be *sub judice?* If it is *sub judic* we will

not be able to take care of the problems of our workers. If it is not *sub judice,* then we will be in a position to deal with the problems of our workers and labourers who are toiling from dawn to dusk in this county. Otherwise, what will happen? If the power enjoyed by the High Court has been taken over by the Tribunal, will the same subject, when it comes within our purview, be treated as *sub judice* or not? It should also be taken note of. Then comes revival and rehabilitation. The National Relief Fund (NRF) is one for revival, redeployment and then only VRS. We are spending 99 per cent of funds for the VRS, not for the revival or rehabilitation. That is the experience during the past decade. From 1991, we can find out, this is the case. The spirit behind the Eradi Commission is totally different? That is not for the revival and rehabilitation; that is for the closure. Therefore, the spirit behind the Commission is different from the spirit of the Bill. The spirit of the Bill contradicts the spirit of the Commission. Therefore, how are we going to protect the interest of the workers of this Sub-Continent? It has to be taken care of by the Government. Now, I come to Bill N0.1. Actually, in Companies (Amendment) Bill, there is transfer of shares. Now, in the Companies (Amendment) Bill, 2002, there is a provision for transfer of shares. Transfer of shares can be done with the approval of the Board at par value. If a shareholder dies, and if he has not been contributing anything to the producer company, then, the Board can ask or direct the nominee to surrender the shares. When the nominee is required to surrender the shares to the Board, they cannot surrender at the par value, determined by the Board. It may be less than the par value. Therefore, a person, who is a member of the producer company, if he transfers his shares at par value, when he dies, there is no guarantee that his nominee will get the par value. That has been taken away by another section.

The next point with regard to this Bill is, 3 per cent of the preceding year's net profit can be given as donation. But, by another Clause donation should not be given to the political parties. I agree with that. But, according to the Companies Act, immediately preceding three years, out of the average of net profits of three years, 5 per cent used to be given as donation. Here, it has been reduced from 5 per cent to 3 per cent. In one way, I welcome it. They say that donation should not be given to the political parties or for political purpose. That is not enough. It should not only be given to the political parties or for political purpose, it should also not be given to any organisation or association affiliated to the political party. The Articles of Association of that organisation may be different.

They may say that they do not support any political purpose. But, there may be some organizations, which support some political parties. Therefore, donations should not only be denied to the political parties, but also to the organisations and associations affiliated to any political party.

Now, I come to the question of loans to members and investments. Clause 581ZK, sub-clause (b) states: "Loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances:

Provided that any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting."

When loans are given, they may be given to relatives also. There appears to be an anomaly in the Bill. The word relative should be preceded by the word 'immediate' because several relatives may be there. The word 'relative' has different connotation than the words 'immediate relative'. Therefore, the word immediate should be inserted before the word relative, and only then, it will serve the purpose for which it has been inserted.

There are some anomalies in this Bill. In spite of that, if it is for the revival, if it is for the rehabilitation, we stand by this Bill. Thank you.

SHRI K. RAHMAN KHAN (Karnataka): Mr. Chairman, Sir, thank you for giving me an opportunity to speak on the two Bills, the Companies (Amendment) Bill, 2002 and the Companies (Second Amendment) Bill, 2002, introduced by the hon. Finance Minister. Sir, as per the objects and reasons mentioned in the Bill, this amendment was brought to incorporate in the Companies Act the latest development and innovation in the corporate laws and also the laws concerning the winding up of the companies. The other Bill, seeks to introduce cooperative principle and cooperative companies as an alternative institution under the Companies Act. I welcome and support both the Bills. Sir, the first Bill, that is cooperative companies Bill, is now restricted to produce companies. I would like to urge upon the Government to extend this to other cooperatives also. In the morning, during the Question Hour, the hon. Finance Minister has apprised the House about the dual control in the cooperative sector and the urban banking sector. If the

cooperative company principle is extended to the urban banking sector also, then this problem of dual control over the cooperative banks will be solved, because, in that case, all the companies, all the private sector banks and the cooperative banks will be regulated by one Companies Act. I would like to know from the hon. Minister whether he would consider this also with further amendments to include cooperative banks and other sectors also, under the principle of cooperative companies. Sir, the Indian Companies Act is one of the oldest companies enactment, which goes as far back as 1850. This Act has been replaced in 1866, 1882, 1830, and the present Act of 1956 has been in operation for almost 46 years. Sir, it was assured to the Parliament that the Government is going to bring a comprehensive legislation and replace the entire Act. In that direction, a committee was appointed, the Companies Bill, 1997 was introduced. It was referred to the Standing Committee. I would like to know when the comprehensive legislation is coming, some of the clauses in the existing Companies Act are redundant, in the light of the liberalisation process, it needs a comprehensive change. The Act is there for a very long time. It requires a total overhaul of the Companies legislation. I am sure that the hon. Minister will consider this. Sir, this is very important. There are six lakh companies and the paid-up capital of these companies is Rs. 2,75,000 crores. Also, in these companies, the debt equity ratio is 1:2. They have borrowed an amount of nearly Rs. 5 lakh crores from the public financial institutions. So, what we need is, a legislation, which is helpful for the functioning of the corporate sector. At the same time, they should regulate properly, as the present sickness of the companies is due to the weak Companies Act. The present Companies Law has undergone changes twenty times. Still, it is not comprehensive. In my opinion, the present Companies Act is very weak. Therefore, in view of the liberalised economy, we need a very good regulatory Companies Act. I would not like to go into the details, because the Government is already thinking of bringing forward a comprehensive legislation.

Sir, now, this Bill seeks to introduce a National Company Law Tribunal. It is a welcome measure. The Standing Committee has also appreciated it. They have also expressed the apprehension that in the Tribunal, which will be constituted, we are transferring the functions of the Company Law Board, we are transferring the functions of SICA, we are transferring the functions of the liquidator, and we are transferring the functions of the various High Courts. As several Members of this august

House have also expressed, there is an apprehension whether this experiment is going to succeed; because it is a new experiment, it has to be given trial. But as the hon. Member, Shri Fali S. Nariman, has said, there is no need to rush through the Bill. The notification should be taken as and when it comes. It remains to be seen whether the Tribunals will be able to take the workload and perform; that is very important. Sir, as far as the National Tribunal is concerned, the term of members is only three years. Then a problem will arise that once a member retires, a vacancy will be created. What is happening in our High Courts will happen here also. Even the Standing Committee has recommended that the term of the Members of the Tribunals should be permanent like any other Tribunal like the Income-Tax Tribunal and others. What is the rationale behind the three-year term of the National Company Law Tribunal? This needs to be clarified.

Sir, there are two or three definitions of an "industrial undertaking". As per the proposed definition, it means an undertaking pertaining to any industries carried on one or more factories or units or any company as defined in Clause (aa) of Section 3 of the Industries (Development and Regulation) Act, 1951. That does not include a small-scale industrial undertaking, as defined in Clause (j) of the Section. From the proposed definition, it appears that an industrial undertaking means an ancillary industrially undertaking as defined in Clause (aa) of Section 3 of the IDRA. Obviously, this cannot be the meaning of industrial undertaking, and in all probability, it is a drafting oversight. Therefore, the definition needs to be suitably amended to remain in line with the existing definition with the exception that the ancillary industrial undertaking is roped in. The small-scale industrial undertaking continues to remain out of the definition.

MR. CHAIRMAN : That is enough.

SHRI K. RAHMAN KHAN : Sir, our party has been allotted one hour.

श्री सभापति : पार्टी के लिए तो ठीक है लेकिन repetition के लिए समय नहीं मिलेगा।

SHRI K. RAHMAN KHAN : Sir, I have one or two more points.

MR. CHAIRMAN : You are repeating all those points which have already been made by other hon. Members. There are no new points.

SHRI K. RAHMAN KHAN : Sir, my next point relates to the creditors. Now, it needs to be clarified whether two-thirds is the number of creditors or the amount. Then, there will be a conflict. Suppose, there are small creditors or one creditor, and two-thirds number is taken into account, then there will be a problem. That needs a clarification. My last point is, whether an industry or a company can be declared sick if payment is not made for three-quarters. Three-quarters is a small period, because of the various difficulties, financial difficulties; three-quarters period is less than a year. If it is less than a year and a company has not paid its arrears, its instalments, then the company can be declared as sick. Sir, this will create a lot of problems. I request the hon. Finance Minister to reconsider this point.

Sir, a cess of 0.1 per cent will be collected from all the corporate bodies, but the amount collected from the levy of cess will be used only for rehabilitation of the sick industrial undertakings. All the corporate bodies will contribute. How far is it justified that those who are contributing to it will not get any benefit from the levy of cess?

In paras 11-15, the Standing Committee has made a number of suggestions. You have said that you have incorporated some of them. The other suggestions given in paras 11-15.2 are also very valid. They should have been incorporated in the Bill. It requires reconsideration. I request that the recommendations made by the Standing Committee in paras 11-15.2 should be incorporated, after reconsidering the whole matter. With these words, I welcome both the Bills.

SHRIMATI VANGA GEETHA (Andhra Pradesh): Sir, I thank you for giving me an opportunity to participate in the discussion on the Companies (Second Amendment) Bill, 2002. as passed by the Lok Sabha.

Sir, I support the Bill. This amendment facilitates the functioning of the Producer Companies or the corporate bodies under the ambit of the Companies Act. The law is very flexible. The Producer Companies have been given freedom to go back to their original field of cooperatives.

In this law, a provision has been made for a single vote for every member, irrespective of his shareholding. By making such a provision, the equity in the Producer Company cannot be publicly traded, but can only be

transferred with the approval of the Board. The Producer Companies should not be so vulnerable that they can be taken over by the multinationals or other companies.

There is another provision made in the Bill. The member of the Producer Companies should be a Primary Producer. The objects of the Producer Companies relate to production, processing, manufacture and sale of primary produce as well as other allied matters.

Sir, the cooperative sector in India has emerged as one of the largest sectors in the world. It is having about five lakh cooperatives, out of which the number of Producer Cooperatives is around 1.50 lakhs. Almost 100 per cent villages are covered under the cooperative sector. Their contribution in bringing the Green and White Revolution is immense. But the pace of reforms has been extremely slow. Sir, I feel that the present legislation is extremely opportune and necessary, particularly in the context of globalisation and liberalisation of the economy and the competitive environment in the country. With these words, I support the Bill. Thank you, Sir.

श्री ललितभाई मेहता (गुजरात) : सभापति महोदय, वित्त मंत्री जी द्वारा लाए गए दो विधेयकों का समर्थन करने के लिए मैं खड़ा हुआ हूं। लेकिन मेरी जो बातें हैं वह मैं कम्पनी (सेकेंड अमेंडमेंट) बिल, 2002 तक ही मर्यादित रखूंगा। सभापति जी, देश में सहकारिता क्षेत्र में सबसे पहला कानून 1904 में कोआपरेटिव सोसाइटी ऐक्ट बना और उस वक्त जो नॉन-क्रेडिट सोसाइटीज थी, उनको उसके दायरे में नहीं लाया गया था। उसके कारण सहकारिता के सिद्धातों पर चलने वाली और जिनका आर्थिक व्यवहार होता है, जिनका आर्थिक हित होता है ऐसी संस्थाओं को ध्यान में रखते हुए 1912 में दूसरा कानून बनाया गया था। फिर जैसे-जैसे यह बाते आगे बढ़ती गई 1919 में फिर सभी राज्यों को यह कानून बनाने की इजाजत दी गई। 1935 में जब गवर्नमेंट ऑफ इंडिया ऐक्ट बना था और गवर्नमेंट ऑफ इंडिया ऐक्ट में 32 एंट्री एंड लिस्ट – 2 में यह प्रावधान किया गया कि यह स्टेट लिस्ट में जाएगा और इसी के कारण आज हमारे देश में सभी राज्यों के अलग-अलग सहकारिता के कानून हैं। 1942 मे जब द्वितीय महायुद्ध हुआ उस वक्त यह महसूस किया गया कि एक राज्य या दूसरे राज्य में सहकारी संस्थाएं यह काम करें और नागरिकों के हितों को ध्यान में रखें और इसके हित को ध्यान में रखते हुए यह मल्टीस्टेट यूनिट कोआपरेटिव सोसाइटी ऐक्ट पहली बार 1942 में बना। लेकिन स्वाधीनता के बाद कई नए आयाम हमारे सामने आए और उसके कारण 1958 में जब नेशनल कोआपरेटिव पॉलिसी रेजोल्यूशन इस देश में हमने पारित किया था उसको ध्यान में रखते हुए जो सहकारी संस्थाएं काम करती हैं इनका विकास अभी अपने मार्क तक नहीं है। उसको ध्यान में रखते हुए कई कमेटियां हमारे देश में स्वाधीनता के समय में बिठाई गई थी । एक मिर्जा कमेटी थी, एक अर्द्धनारेश्वरन कमेटी थी, एक मराठे कमेटी थी और एक कपूर कमेटी बिठाई गई थी। लेकिन

3.00 p.m.

जब 1985 में यह कमेटी ऑन कोआपरेटिव लॉ बनी थी तो उन्होंने यह बात हमारे सामने रखी कि सहकारी संस्थाओं में प्रोफैश्नलाइजेशन आना चाहिए, सहकारी संस्थाओं में डैमोक्रेटाइजेशन आना चाहिए और इसको ध्यान में रखते हुए तो ऑबनर्वेशन किया गया था, उसको मैं कोट करना चाहूंगा. "The restrictive features of cooperative legislation should be removed, and both the present cooperative law and model legislation and rules, which have been under consideration of the States, should be modified." इनको ध्यान में रखते हुए हमारे देश में कई प्रयास किए गये। आज राज्यों के विभिन्न कानून हैं। फिर भी यह महसूस किया गया कि राज्यों के विभिन्न कानूनों के अंतर्गत जो प्रावधान है, वह सहकारी संस्थाओं के विकास के लिए पर्याप्त नहीं है और जहां-जहां पर जायज सेवाओं का क्षेत्र है, वहां पर राज्यों के कानून के अंतर्गत सहकारी संस्थाएं काम करती हैं। जहां पर सहकारी संस्था वित्तीय सहायता लेती है, वहां राज्यों के कानूनों के अंतर्गत वह काम करती हैं। लेकिन पहली बार 1995 में, 4 मई 1995 को आंध्र प्रदेश म्युचुअल कोऑपरेटिव सोसायटीज ऐक्ट, एक समांतर कानून आंध्र प्रदेश में बनाया गया, सहकारी संस्थाओं को स्वायत्तता देने के लिए, सहकारी संस्थाओं के संचालन में राज्य का जो हस्तक्षेप था, उसको समाप्त करने के लिए और सहकारी संस्थाओं के विकास के लिए। ऐसे नए कानून जम्मू में भी बनाए गए, आंध्र प्रदेश में भी बनाए गए, बिहार और यू.पी., सब राज्यों में बनाए गए लेकिन वे राज्य की सरकार पर निर्भर नहीं हो और स्वयं विकास कर सकें, इसका प्रावधान इसमें किया गया। उन्हें स्वायत्तता मिलनी चाहिए, व्यापार के निर्णय जो स्वंय ले सके, इसके लिए समांतर कानूनों में प्रावधान किया गया। जहां पर ऐसी सहकारी संस्थाएं काम करती थीं जो उनके हेतु, उनके ध्येय की पूर्ति करने मे निष्फल रही तो समांतर कानून लाकर ऐसी सहकारी संस्थाओं को उनके अंतर्गत लाया गया। इसके अतिरिक्त एक राज्य से दूसरे राज्य के दायरे में जाने के लिए सभासदों का जो चयन करना है, उसका रजिस्ट्रेशन करना है, उसके लिए हमारे यहां मल्टी स्टेट कोऑपरेटिव सोसायटीज ऐक्ट, 1984 बना। इसके अतिरिक्त नेश्नल लैवल पर काम करने वाली सहकारी संस्थाओं के लिए भी यह आवश्यक था तथा एक से ज्यादा राज्यों में काम करने वाले लोगों के लिए भी यह आवश्यक था। लेकिन आज जो बिल लेकर वित्त मंत्री जी आए हैं, कम्पनीज सैकेंड़ अमैंडमेंट बिल लेकर आए हैं, इस देश में जिन सहाकारी संस्थाओं को लैजीस्लेटिव फ्रेम वर्क कम्पनी का चाहिए, उसके लिए यह बिल अत्यंत महत्व का है। जो प्रोडयूसर कम्पनी एक राज्य से दूसरे राज्य में तथा एक से ज्यादा राज्यों में काम करना चाहती है, उसके लिए भी यह प्रावधान आवश्यक है। जो प्रोडयूसर कम्पनीज दूसरी कम्पनियों के साथ कोलैबोरेशन करना चाहती है, ज्वाइंट वैंचर करना चाहती हैं, वे अलग से अपना प्रमोशन सबसीडरी कम्पनी करके भी करना चाहेंगी। आज जो डब्ल्यू.टी.ओ. का और ग्लोबलाइजेशन का युग है, उसके कारण कारपोरेट सैक्टर के साथ लैवल प्लेइंग फील्ड भी चाहिए। उसके लिए भी यह नितांत आवश्यक है। देश में जो सहकारी संस्थाएं काम कर रही हैं, उन सहकारी संस्थाओं में बहुत बड़ा स्टेक लगा हुआ है। आज देश में करीब 5 लाख 28 हजार 249सहकारी संस्थाएं काम करती हैं जिनमें 22 करोड़ 87 लाख 67 हजार भारत के नागरिक उनके सभासद है और 16 हजार 649 करोड़ रूपए की पूंजी इसमें लगी हुई है। इसके अतिरिक्त 2 लाख 85 हजार 643 करोड़ रूपए की वर्किंग कैपीटल इन सहकारी संस्थाओं में काम आती है। इसको ध्यान में रखते हुए सहकारी संस्थाओं का महत्व हमारे देश में कितना है, यह हम जान पाएंगे। बाईस करोड़ लोग

इसके साथ जुड़े हुए हैं। आर्थिक क्षेत्र के जो विभिन्न आयाम है, उनमें सहकारी संस्थाओं का प्रदान कितने महत्व का है, मार्केटिंग एंड प्रोक्योरिंग ऑफ कॉटन, उसमें इस देश में 73 प्रतिशत जो काम होता है, वह सहा कारी संस्थाओं के माध्यम से होता है। हमारे देश में खाद का जो वितरण होता है, उसका 37 परसेंट सहकारी संस्थाएं करती हैं । हमारे देश में चीनी का उत्पादन 56 प्रतिशत सहकारी संस्थाएं करती हैं। ऐडिबल ऑयल 51 प्रतिशत और इस देश में जो भंडारण की क्षमता है, उसमें 63 प्रतिशत भंडारण की व्यवस्था इस देश की सहकारी संस्थाओं के द्वारा हमें प्राप्त होती है। हैंडलूम वीवर्स में 55 प्रतिशत लोग ऐसे हैं जो सहकारी संस्थाओं के माध्यम से काम करते हैं और 21 प्रतिशत फिशरमेंन सहकारी संस्थाओं के माध्यम से काम करते हैं। देश के 100 प्रतिशत गांव और देश की 67 प्रतिशत इसके साथ जुड़ी हुई हैं। अर्बन कोऑपरेटिव बैकिंग क्षेत्र का विचार करें तो आज एक लाख करोड़ रूपए से भी ज्यादा डिपॉजिट्स इन अर्बन कोऑपरेटिव बैंकों के पास हैं। इन अर्बन कोऑपरेटिव बैंकों ने 60 हजार करोड़ रूपए से ज्यादा ऋण दिया है । दो हजार के करीब बैंक यहां काम करते हैं। सबसे ज्यादा रोजगार देने वाला कोई क्षेत्र अगर इस देश में है, तो एक करोड़ तीस लाख लोग आज सहकारी संस्थाओं के माध्यम से हमारे देश के अंदर रोजगार के अवसर पाते हैं। इतना बड़ा महत्व होने के कारण इन सहकारी संस्थाओं का संचालन सुचारू रूप से चले, सहकारी संस्थाएं मजबूत हो, सहकारी क्षेत्र का विकास हो, इसको हमें ध्यान में रखना होगा और इस दृष्टि से आज जितनी भी सहकारी संस्थाएं काम करती है, हमारा अनुभव यह रहा है कि सहकारी संस्थाओं में से ज्यादातर सहकारी संस्थाएं अपने उद्देश्य की पूर्ति के लिए अपने विकास के लिए सक्षम पुरवार नहीं हुई और इसके कारण यह जो नया कानून वित्त मंत्री जी लाए हैं, इसका मैं समर्थन करता हूं। कोई भी कानून जब देश में बनता है तो इस कानून के मायने क्या बातें सामने आनी चाहिए? What should be the key elements of a good law? अगर इसको ध्यान में रखेंगे तो, first, it should be fundamentally and inalienably consistent with the cooperative principles; second, it should enable and not prescribe; third, save where the public interest is at stake and that is normally the concern of other laws and byelaws; fourth, it should not duplicate, much less replace, other laws too often; and, fifth, it should enforce the fiduciary responsibility of elected leaders and senior managers, holding them accountable for managing the affairs with same prudence and integrity, as they would do in their own case. इसको अगर ध्यान में रखेंगे तो इस बिल में जो भी प्रावधान किए गए हैं, एक अच्छें कानून के सभी प्रावधान इसमें किए गए हैं और इसको ध्यान में रखते हुए इस बिल का मैं समर्थन करता हूं, आभार।

SHRI PRANAB MUKHERJEE : Thank you, Mr. Chairman, for giving me this opportunity to share some of my perceptions in regard to these two Bills, the Companies (Amendment) Bill, 2001 and the Companies (Second Amendment) Bill, 2001. While making his observations, one of my colleagues has suggested that there should be a comprehensive company legislation for corporate governance. In fact, in the last three or four years, we have attempted to do exactly that. One of the major amendments, which was related to the Companies (Amendment) Bill, 1997, was done in

two stages. Mr. Jaitley was then the Minister - in - charge and I had the privilege of presiding over the Standing Committee which considered the two Bills. One was, of course, relating to taking out certain sections to facilitate buy-back arrangements and investments in the parent company shares. And the other amendment was really very comprehensive. If somebody goes back to the history of the Company Laws, he will find that it has almost taken 40 years to make the major amendments. First in 1916, thereafter in 1956 and, thereafter, initiatives were taken in 1977 and when the legislative process is completed through these two Bills, I think this exercise will be over.

In this connection, I would like to point out that while undertaking the major amendments in the Company Law, the question of insolvency and winding up, expeditious methods of winding up, also arose. But, at that point of time, since the recommendations of the Eradi Committee were not available to the Government or to the Standing Committee, it was decided to take it up later on. And, in fact, the Government brought out this piece of amendment after the recommendations of the Eradi Committee were available.

One of the major reasons, which we shall have to keep in view, is that why the process of winding up should be expedited. Apart from any other things, harassment of the individuals concerned, there are two major aspects which sometimes fail to get due attention. First is that the productive assets get unlocked and remain unlocked for a very long period of time, if the dissolution does not take place expeditiously. Secondly, most of the time, it has been found that the assets are frittered away and completely wasted and, Sir, if you look at the figures, which are indicated in the report itself, you will be astonished to find out that in number of cases, it has taken 15 years, 20 years or 25 years. Now what assets would remain intact for a period of 20 or 25 years?

Sir, upto 31st December, 1999, the age-wise classification under winding up process has been given. For the o to 5 years, there are 1065 cases, for 5 to 10 years, there are 603 cases, for 10 to 15 years, there are 482 cases, for 15-20 years, there are 321 cases, for 20-25 years, there are 251 cases and for 25 years and above, the figure is 473 cases. The simple point is after all that the country has invested a lot in creating certain assets, the productive potentiality of which is not being utilised and they just get simply wasted.

Therefore, it was considered necessary that expeditious measures should be taken. We have discussed on a number of occasions about pending cases in the High Court. Special attention cannot be paid by the High Courts to dispose of the cases in the winding process despite whatever we may like to have, whatever may be our desire. As far as the decision of winding up is concerned, it was to be decided in three compartments, one in the High Court, another in the Company Law Board and the third one in the BIFR, as a last resort. But the important aspect of the BIFR was that their major mandate was for the rehabilitation. I am not going into the aspect of apportioning the blame but the fact remains that in a number of cases which were registered with the BIFR, from 1987 to 2000, total number of cases were 3,068 and upto 1999, actual revival took place in 264 cases. About 375 cases were in the revival process and winding up was recommended in 741 cases. But the pending cases were almost more than one-third. It means that no decision was taken. It may be that they did not have the mandate, they did not have the teeth or whatever be the reason, but the fact remains that the decision could not be taken in most of the cases referred to these organisations, and as a result of which, large number, even here too, of productive assets were either not utilised or in the process of being wasted. If I could understand it correctly - if I am wrong, the hon. Minister may correct me - the Eradi Committee, an Expert Group, was suggested, separately, to prepare a special note in regard to the BIFR and as to what could be done. They considered that it would be desirable to combine all the three functions in one body so that there is no multiplicity of the organisations and one does not work at cross purposes. In fact, we had - I am just telling about the Committee - an opportunity of listening to a large section of the opinion-makers, opinion-builders and opinion-holders in the society. It is not that we only listened to the corporate sector. We devoted one full day - I hope my colleague, Shri Bhardwaj and other Members of the Committee would bear with me -for having an interaction with the trade union organisations. All the major Central trade union organisations responded to our invitation and they gave their suggestions. It is not that we had agreed to everybody's suggestion. We tried to find out how to resolve this problem and in what best manner these issues could be resolved. That is why, we had recommended to the Government that this piece of legislation should be expedited. I am happy that with the consent of this House we would finally be able to pass this Bill. So far as the anomaly which is arising out of SICA is concerned, as the hon. Minister has very correctly pointed out, it is not that all the

provisions of this Amendment Bill would be operationalised on the same day. So far as SICA is concerned, the relevant provisions could be operationalised at the appropriate time. I am happy that such a provision has already been made in the Bill. I am glad that at the very beginning of the debate, the Finance Minister assured us about the continuation of employment of those who are working in the Company Law Board and other organisations. Of course, depending on their eligibility, they can go on deputation. Anyway, nobody is going to lose his job. The hon. Minister has already given this assurance. I would like to submit one thing for the consideration of the hon. Minister. Even after the Bill is passed, we shall have to consider very seriously as to how to re-address the sickness of industries and arrive at expeditious decisions. To my mind, what is important is, if we can take decisions in time and prevent the sickness, the question of rehabilitation would be much easier. As you are doing major reforms in the banking sector and the financial sector, with the passage of the NPA Bill, the banks would be more accountable because they are the first organisation to understand the sickness of any industry from the irregular cash flow statement and other relevant documents. If steps could be initiated at that stage, perhaps, we would be able to resolve the problems at a lesser cost and we would be able to solve these problems in a very short time. This is one issue which we cannot ignore because in our country we cannot provide social security and we cannot create jobs as the developed countries can. That is why even in the uneconomic sector, sometimes, continuation of employment and retention of employment becomes necessary, as there is no other avenue open. Therefore, I support the Companies (Amendment) Bill which has been processed through the Parliamentary Standing Committee.

So far as the second Bill in regard to producer companies is concerned, an apprehension was expressed whether through this exercise the cooperative movement was going to be affected, whether we were interfering with the cooperative character of the organisations. The most important feature of this Bill is when we considered, because in our corporate culture, we have the concept of public sector companies, private limited companies, ownership, partnerships and a new concept of the producer companies having the flexibility of the cooperatives, were thought of. And, many of the leading persons of cooperative movements, they wanted that existing cooperative laws are throttling the expansion and the development of the cooperative sector, especially the producer cooperative.

Therefore, an arrangement should be made, and it is optional; it is not mandatory. If somebody wants to convert itself into a producer company, option lies with him, and it requires the special majority in the decisionmaking process and if they have that, in that process, if they go in for competition, and if they want to go in for competition, definitely they should have the flexibilities available to a company under the Companies Act. Because, cooperative laws are more restricting, the enormous powers which the registrar of cooperatives enjoy, and hardly any decision is being taken by the cooperatives themselves. And, within that rigid frame, despite the fact that a lot of concessions, in terms of money, in terms of liberty and flexibility of functioning, were given, the movement has not attained the desired level. On the other hand, our corporate sector ought to face challenges from the different counterparts belonging to different countries with the opening up of the economy. And, if our corporate laws are not in tune and they cannot provide adequate flexibility to the corporate sectors to be competitive, including the producer companies in the cooperative sectors, then ultimately, we won't be able to survive. Keeping these two basic objectives in view, and after a good deal of deliberations, we recommended these suggestions, and I am glad that most of the suggestions have been accepted by the Government. We understand that sometimes, all the suggestions cannot be accepted. Anybody will be quite happy if all the recommendations of the Standing Committee are accommodated by the Government, but sometimes there are administrative difficulties. But, by and large, the spirit of the recommendations has been incorporated and with the passage of this law, I do feel that Indian corporate sector would be placed on a level playing field. They will have the opportunities of competing with the others and they will not be fettered by the legal framework which stand in the way, which stand in the way of the natural growth and the development of the corporate sector, because India's industrialisation, our economic growth, much depend on how our corporate sector behaves; how they become competitive; how they become transparent; how they become accountable; and, how the equity culture spreads all over the country. Almost 40 years ago, it was thought of and one organisation, which the other day, we had an opportunity of debating here. The whole purpose of UTI was to create equity culture in this country, to create awareness in this country. But because of bad management of the corporate sector, they failed to inspire confidence in the minds of the people, in the minds of the investors. And, many people invested their surplus money in dead assets like gold, but not in equity,

because they did not have confidence in the equity market. A series of measurements and enactments are necessary, and I must say, it cannot be 'stop and go'. This is a constant exercise. With the changing world, with the changing environment within the country, outside the country, we should have the flexibility of adjusting our policies, changing our instrumentality to meet the requirements of the time.

With these words, Mr. Chairman, Sir, I support both these Bills and I request the House to accept them. As Chairman of the Standing Committee, I do feel, as their representative, I have this privilege of making this recommendation. Thank you.

श्री सभापति : माननीय वित्त मंत्री जी। आप बोले, उसके पहले मैं माननीय सदस्यों से एक निवेदन करना चाहूंगा कि कई सदस्य तो ऐसे हैं जिन्होंने डिबेट में भाग लेने के लिए अपना नाम लिखाया और वे उपस्थित नहीं हैं, कई सदस्य ऐसे हैं जिन्होंने डिबेट में भाग लिया और वे इस समय उपस्थित नहीं है। यह सदन की प्रतिष्ठा का प्रश्न है। जो सदस्य डिबेट में भाग लें उनको निश्चित रूप से यहां उपस्थित रहना चाहिए और साथ ही जिन्होंने अपना नाम लिखाया है वे भी वहां उपस्थित रहे तो इससे सदन की शोभा बढ़ेगी और मैं समझता हूं कि सदन का समय भी नहीं जाएगा। यहां फाली नारीमन जैसे वृद्ध सदस्य बैठे हैं, लेकिन जवान जवान सब यहां से भाग जाएं तो यह उचित नहीं होगा।

श्री भारतेन्दु प्रकाश सिंहल (उत्तर प्रदेश) **:** सर, मेरा नाम डिबेट के लिए दिया गया था, लेकिन मुझे बोलने की अनुमति नहीं दी गई।

श्री सभापति : आप एप्रोप्रिएशन पर बोल लें। आप तो सब चीजों पर बोल सकते हैं। यह कोई नई बात तो नहीं है।

श्री भारतेन्दु प्रकाश सिंहल : नहीं, सर। ऐसी बात नहीं है।

SHRI JASWANT SINGH : Mr. Chairman, Sir, after the learned advocacy of hon. Shri Pranabbabu, who had been both Finance Minister and Leader of the House and is now the Chairman of the Standing Committee, there is really very little that I, as the mover of the two Bills, have been left with to say. I am very grateful that he has lent his unambiguous and strong support to both these pieces of legislation. My task is now limited to answering some of the queries that had been raised, and I think, it is only appropriate that on the question of what Pranabbabu had said, I do wish to assure him that it is the intention of the Government and the Finance Ministry to come before Parliament in the very next Session

of Parliament. He referred to the Amendment Bill, 1997. In that Bill, a certain number of provisions were adopted, and the remaining have been incorporated now. I hope very much that in the very next Session of Parliament, we will come forward to further liberalise some of the provisions and also strengthen some regulatory provisions of the Act so that we have as effective and as modern and world-class system as we, possibly, can.

Sir, I will very quickly deal with some of the issues that have been raised here. Dr. Singhvi is not here. There is no intention of enhancing the Cess that has already been listed here. His second point related to delays. It is to avoid delays that time limits have been provided at each stage. It is not because we want to perpetuate delays and that, indeed, is the purpose of the Committee also, and the Committee had gone into it in some detail.

Shri Prabhakar Reddy asked for supplementing the Cess. It will not be possible for the Government to supplement the Cess that has been provided. This is neither possible nor is it a part of the scheme of things.

The second point that Shri Reddy had was: If SICA is repealed, and if the BIFR is abolished, then, what happens to the pending cases before the BIFR? I propose to provide for it when the SICA repeal is done. After it is considered by the Standing Committee, if the Standing Committee grants its approval for repeal... then in the SICA (Repeal) Bill that scheme sanctioned by BIFR will be monitored by the National Company Law Tribunal. All other pending cases will abate for the BIFR but will necessarily have to be referred to the National Company Law Tribunal as erosion of net worth is exceeding 100 per cent in these cases, while the threshold under the new Bill is only 60 per cent. Further, we will make the rules. My predecessor in the Company Law Ministry, a good friend and an eminent lawyer, Shri Arun Jaitely, has drafted these two particular pieces of legislation, when he was holding the charge and he has very ably provided them. In the rules we will take care and further facilitate migration from BIFR to the National Company Law Tribunal. Shri Dipankar Mukherjee had said, are we not pre-empting the Parliamentary Standing Committee considering the repeal of SICA? I had answered it at that very time when the constitutional aspect was made. We are not pre-empting. It has been provided in the Bill, that different sections of the legislation can be brought into effect from different dates and the provisions relating to powers which are currently with the SICA will be brought into effect, only when, and after

SICA is repealed. Shri Dipankar Mukherjee had also said, is it correct about labour interest? And this was the point, which some other hon. Members had also raised. I must make it quite clear here that so far as labour interest and what he had averred about..*(Interruptions)...*

SHRI JIBON ROY (West Bengal) : Forget it.

SHRI JASWANT SINGH : No. I cannot. When I face you, how can I forget? So far as labour interests are concerned, the proposed Companies (Amendment) Bill, 2002 actually does not impinge on any of the existing laws relating to labour. And it also does not contain any provision to repeal any section of any of the labour laws, but provides in addition for the following. I wish to take a little time to elaborate it, Sir. This is not a debating point. Mr. Virumbi had also said so. Not for argument's sake but to reassure hon. Members on the question of security of tenure for labour, I would say this. The additional points are: to make such person eligible to be appointed as technical Member in the National Company Law Tribunal who has been a presiding officer of a labour court, tribunal, national tribunal or a person having special knowledge of and experience, which means, directly, from the trade unions, of not less than 20 years in matters relating to labour. This is a very adequate provision for them to be part of the Company Law Tribunal; labour as creditors, to the extent dues payable, they can also make a reference to the Tribunal; thirdly, in cases relating to revival, rehabilitation and winding up of companies, there shall be three members' bench and one of the members will be a member who is conversant with labour laws; fourthly, the Revival and Rehabilitation Fund will be used only for making interim payment of workmen, workmen's dues, pending the revival or rehabilitation of the sick industrial undertaking; then, Sir, fifthly, the Tribunal shall have powers to dispose of the assets of a sick company even during the period of inquiry so as to help payment to workmen whenever considered necessary. Sixthly, winding up is to be taken up, as the hon. Member, Shri Pranab Mukherjee, has mentioned, only as a last resort, after efforts at rehabilitation have failed. And the third point in the Statement of Objects and Reasons clearly states that the main objective is facilitating or expediting stabilisation, rehabilitation, or protection of workers' interests. I have taken time to explain this only to reassure the hon. Members, including Shri Dipankar Mukherjee, about the terms of reference, because Shri Dipankar Mukherjee had said that in the terms of reference of the Eradi Committee, there was no mention of the revival part

of it. I would request the hon. Member to assess the finished product, and not the input. Even if the terms of reference did not have the aspect of labours' interest, if, what comes out at the end of the cooking, has fully taken that into account, then I do not think that need worry us any more. The hon. Member, Shri Dipankar Mukherjee, had said -- and it is correct --that section 32 had been misused by corporates to keep creditors at bay. But this Bill does away with the protection to industrialists. And I have no difficulty in sharing with the House that, on account of the various measures that the Parliament has, in the Winter Session, undertaken, from securitisation to other aspects, I am actually very encouraged by the response that I am now receiving from various financial institutions, etc. about the clearance, at the very earliest, of their dues. Sir, the steps that we have taken are actually now persuading and encouraging, and in some cases, compelling, the creditors to come forward and begin to clear their dues.

There was another point. Actually, this Bill is towards revival. We do believe that it is a Bill not for winding up, but for revival. That is the central purpose. I do not wish to go into the question of advantages of the National Company Law Tribunal over the existing system. The hon. Member, Shri Pranab Mukherjee, has already covered this aspect. Now, it is very difficult for me to, in a sense, question the legal acumen of the hon. Member, Shri Fali S. Nariman, one of our renowned jurists. But so far as his point about having a judge, with administrative experience, is concerned, personally, I agree that it need not always be a judge; but, here, we have provided that it should be a judge of the High Court, because we are, in fact, taking up the issue which relates to the High Court's powers, and it has been felt that it would facilitate the Supreme Court's support, if we had the involvement of the judiciary in this regard. Nevertheless, we have now provided for a Member (Administration), who can look after the financial and administrative matters, so that the judge concerned can concentrate on the judicial matters. His second point was regarding section 433 -- winding up for anti-national and such activities. Now, this was, in fact, one of the specific recommendations of the Eradi Committee. The Eradi Committee had covered aspects of anti-national activities, etc. That is why this provision was included. Mr. Virumbi's other point was about any other person' is, in fact, circumscribed by the fact that this will not be a professional body like accountants, etc., because section 31A(a) states that an 'operating agency' means group of experts' etc., etc. Your second

point was about the transferability of shares. Clause 581ZD(3) clearly states that every member shall nominate, in a prescribed manner, a person to whom his shares in the producer company, shall vest upon his death, etc. So, there is a provision in the Bill. Hon. Shri Khan is not here, but the point he made was that the Companies Act should be updated. But before the Companies Act is updated, we need a comprehensive revision, and as I have said just now, we hope to be coming forward in this regard in the very next session itself. There was another point about 'three years'. This was done because we don't want the Tribunal to become yet another Government service. He said something about sickness. As Shri Khan is not here, I don't think we need to take time on that. As far as other observations are concerned, there are a few and not many. I think, Sir, that I have now covered all the issues which required to be covered. Therefore, I request the House to pass both the Companies (Amendment) Bill, 2002 and the Companies (Second Amendment) Bill, 2002.

श्री भारतेन्दु प्रकाश सिंहल : सभापति जी, अगर आपकी अनुमति हो तो एक बिन्दु नेशनल ट्रिब्युनल के संबंध में मैं निवेदन करना चाहता हूं।

श्री सभापति : नहीं करे तो ठीक है।

श्री भारतेन्दु प्रकाश सिंहल : बहुत आवश्यक है।

श्री सभापति : मेरी अनुमति नहीं है।

I shall now put the motion regarding consideration of Companies (Amendment) Bill, 2002 to vote. The question is:

> "That the Bill further to amend the Companies Act, 1956, as passed by Lok Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clause 2 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI JASWANT SINGH: Sir, I move :

'That the Bill be passed."

The question was put and the motion was adopted.

MR. CHAIRMAN: I shall now put the motion regarding consideration of the Companies (Second Amendment) Bill, 2002 to vote. The question is:

"That the Bill further to amend the Companies Act, 1956, as passed

by Lok Sabha, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill.

Clauses 2 to 4 were added to the Bill.

MR. CHAIRMAN: In clause 5, there is one amendment, N0.1, by Shri Hansraj Bhardwaj, Shri Suresh Pachouri and Dr. Prabha Thakur. Mr. Bhardwaj, are you moving your amendment?

SHRI HANSRAJ BHARDWAJ: Mr. Chairman, Sir, \ take this opportunity to thank the hon. Leader of the House for being gracious enough to respond to my point. It was done only with the spirit of drawing his attention. I am not moving my amendment.

Clause 5 was added to the Bill.

Clauses 6 to 134 and the Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI JASWANT SINGH: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

THE APPROPRIATION (NO.6) BILL, 2002

THE MINISTER OF FINANCE AND COMPANY AFFAIRS (SHRI JASWANT SINGH): Sir, I beg to move:

> "That the Bill to authorise payment and appropriation of certain further sums from and out of the Consolidated Fund of India for the services of the financial year 2002-2003, as passed by Lok Sabha, be taken into consideration. "

Sir, this Bill arises out of the Supplementary Appropriations charged on the Consolidated Fund of India and Demands voted by the Lok Sabha. It is proposed to augment the sanctioned provision by Rs.9,045.05 crores. Details of Supplementary Demands are given in the document, which has already been laid on the Table of the House.

However, to the extent of Rs.4,012.62 crores, the augmented provision is matched by savings of the concerned Departments or by enhanced receipts/recoveries. In addition, token provision of Rs.32 lakhs is being sought, one lakh for each item of expenditure, for enabling re-appropriation of savings in cases involving New Service or New Instrument of Service. Hence, the net cash outgo involved in the proposal is only Rs.5,032.11 crores.

The question was proposed.

MR. CHAIRMAN: Now, Shri B.P. Singhal.

SHRI B.P. SINGHAL (Uttar Pradesh): Sir, I have nothing to say on it as I am not prepared on it. I would not like to speak without any preparation. *...(Interruptions)...*

MR. CHAIRMAN: I think there is no amendment and no Member to speak. So, I put this to vote.